



STATE ETHICS COMMISSION BULLETIN

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Ethics Commission Rules on Premium Tickets

Special access to tickets no longer permissible to public officials

On January 15, 2004, the Commission issued an advisory regarding public officials receiving tickets to sporting, theatrical, musical or other events. The advisory marks the first time that the Commission has ruled that special access to tickets by public officials may violate G.L. c. 268A, the conflict of interest law.

The advisory, which was approved by the five-member Commission, states: (1) public officials may not accept free tickets worth \$50 or more given to them because of their position, and (2) public officials may not use their positions to take advantage of special access to purchase such tickets. The ruling states that a public official will violate section 23(b)(2) of the conflict of interest law by getting access, or accepting an opportunity not available to the general public, to purchase tickets if “a reasonable person wishing to attend the event would pay \$50 or more over the face value to purchase the ticket.” Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to obtain for himself or others an unwarranted privilege.

A public official receives special access, even if he pays face value for the tickets, if the tickets are priced at more than \$50 over face value because of high demand, are not available to the general public or are available through a cumbersome and time consuming process that the public official avoids.

The ruling carves out a narrow

exception that would allow attendance at an event for “legitimate, public ceremonial purposes,” such as a mayor throwing out the first ball.

The ruling cautions that such access may also violate the gratuity section of the conflict of interest law, which prohibits a public official from receiving anything of substantial value for or because of any official act or acts performed or to be performed by such official. Finally, the Commission notes that public officials who receive special access to purchase tickets, even where the cost is less than \$50, may have to disclose the receipt of tickets to avoid the appearance of a conflict of interest or favoritism. Section 23(b)(3) prohibits a public official from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee’s favor in the performance of his official duties.

The ticket advisory provides prospective advice about the application of the conflict of interest law surrounding tickets for public employees. Full text of the advisory is available at <http://www.mass.gov/ethics/adv0401.htm>. Public officials and employees with questions about how the conflict of interest law applies to receiving tickets and other gifts may contact the Commission at 617-727-0060 for free, confidential legal advice.

Statements of Financial Interests Due

The filing deadline for state and county appointed officials who are required to file annual statements of financial interests (SFIs) for calendar year 2003 is Saturday, May 1, 2004. For candidates and elected officials in state and county government, the deadline is Tuesday, May 25, 2004.

This year, more than 4,400 officials are required to file financial disclosure forms. In addition, an estimated 250 candidates will also be required to file. Candidates must receive a receipt confirming that they completed an SFI prior to filing nomination papers with the Secretary of State. Each year, nearly 100% of filers meet the deadlines.

This year marks the third year of the availability of on-line filing. Last year, 54% of those required to file did so on-line.

Commission staff members are available daily between 9 a.m. and 5 p.m. to provide walk-in or telephone

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FILE YOUR SFI TODAY
AT WWW.ETH.STATE.MA.US

From the Executive Director

“Political Activity”

As each election season approaches, the Commission receives an increased number of calls concerning appointed public employees and their political activity. While most political activity is governed by G.L. c. 55, which is enforced by the Office of Campaign and Political Finance (www.mass.gov/ocpf, 617-727-8352), a number of issues are also regulated by the conflict of interest law, G.L. c. 268A.

In most cases, appointed public employees are free to engage in political activities, except political fundraising, on their own time as individuals. The standards of conduct contained in the conflict of interest law generally prohibit appointed public employees from:

- using any public resources or facilities, or the state seal or coat of arms, for campaign purposes.
- engaging in any campaign activities during their public working hours.
- representing a campaign (or anyone else) in connection with some matter in which the employee’s own level of government (state or local) has a direct and substantial interest (unless they are “special” employees).
- soliciting campaign contributions or services, or anything else of substantial value, from subordinate employees, vendors they oversee, or anyone within their regulatory jurisdiction.

Elected officials may also face restrictions similar to those outlined above. As always, officials and employees who have questions about their activities may contact the Commission for free, confidential legal advice.

Peter Sturges

Commission Amends Enforcement Procedures

The Commission voted at its February meeting to amend its Enforcement Procedures to allow a designated Commissioner, chosen by a majority vote, to review complaints generated and administrative closing determinations made during complaint intake and staff review.

The designated Commissioner’s review may include, but is not limited to, reviewing complaints and follow-up action or evidence gathered during complaint intake and staff reviews and observing staff complaint review

meetings. The Commissioner may make reports or recommendations to the full Commission regarding any complaint or any determinations made during complaint intake or staff review.

A Commissioner who has been substantially involved in the complaint intake or staff review of a particular complaint may not serve as a Presiding Officer in a related adjudicatory proceeding but may participate as a Commissioner in deliberations regarding the matter.

Advisory Opinions

EC-COI-03-3 - Pursuant to G.L. c. 268A, §21A, a board member is eligible to apply for a position under the supervision of the board on which he serves without first resigning his board position. The board, however, may not take any action regarding the board member’s application, such as selecting him for an interview, until 30 days have elapsed after the board member has terminated his service as a member. The board, however, may act within the 30-day period on any other application.

EC-COI-03-4- A certain public agency is a “municipal agency” as that term is defined in G.L. c. 268A, the conflict of interest law, and, accordingly, its members and employees are municipal employees within the meaning of that law. Another certain public agency is a “county agency” and, accordingly, its members and employees are county employees within the meaning of that law. The text of this opinion was not available as of the date of publication. When available, the opinion will be posted on the Commission’s web site.

Phone Hours Restored

The Commission has restored a full-time receptionist position and welcomes back Carolyn Teehan as the first person many callers and visitors encounter when they contact the Commission.

While the change has increased the Commission’s ability to answer phone calls, due to the volume of phone calls, especially during the financial disclosure filing season, calls may be directed to voice mail. Please leave a message if you are unable to reach the receptionist; your call will be returned promptly. The Commission office is open from 9:00 a.m. to 5:00 p.m. Monday through Friday.

Commission Members Spring, 2004

E. George Daher, Chair
Christine M. Roach, Vice-Chair
Elizabeth J. Dolan
J. Owen Todd
Tracey Maclin

Carol Carson
Editor

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assistance to filers who wish to file electronically.

Failure to file a statement of financial interests by the deadline may result in civil penalties. These penalties are imposed according to the following schedule:

- 1-10 days delinquent: \$ 50
- 11-21 days delinquent: \$100

- 21-30 days delinquent: \$200
- 31 days or more: \$500

These penalties are doubled for repeated late submission of an SFI.

Failure to file may result in civil penalties of up to \$2,000. In addition, an employee who is required to file but who has not done so may not continue to perform his or her duties or receive compensation.

Recent Enforcement Matters

Disposition Agreements

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A decision and order concludes an adjudicatory proceeding or civil trial. The decision is a finding by the Commission that the law was or was not violated and the order determines the civil penalty or other remedy, if any. The Commission's decision may be appealed in Superior Court.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

A public education letter (PEL) is issued where the Commission found reasonable cause to believe that the law was violated but chose to resolve the case with a PEL because it believes the public interest would best be served by doing so. A PEL does not require the subject to admit violating the law and is issued publicly with the subject's consent. (Prior to December 2002, these letters were referred to as public enforcement letters.)

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of the Decisions and Orders, Disposition Agreements and Public Education Letters can be found on the Commission's website, www.mass.gov/ethics.

[In the Matter of David Bunker](#)

The Commission fined former State Rep. David Bunker \$2,000 for violating the state's conflict of interest law by using his position to obtain unwarranted per diems. Bunker also forfeited \$1,080 representing 30 per diems to which he was not entitled. Bunker, who did not maintain accurate records of his schedule, acknowledged that he was not entitled to approximately 30 per diems paid to him. By using his official position to obtain per diems for days that he was not present at the State House, Bunker violated §23(b)(2).

[In the Matter of Thomas Chilik](#)

Greenfield Montague Transportation Area (GMTA) General Manager Thomas Chilik was fined \$2,000 for his involvement in various personnel matters affecting a GMTA employee, Kathleen Williams, whom he was dating at the time and later married. Chilik and Williams began dating exclusively in 1999 and were married on June 9, 2003. While they were dating, Chilik reviewed and approved Williams' pay increases, authorized her to attend out-of-state conferences that he also attended and promoted her in 1999 from administrative

assistant to GMTA office manager. In addition, he was her day-to-day supervisor. By his involvement in personnel matters affecting Williams, Chilik violated §23(b)(3).

[In the Matter of Thomas Haluch](#)

Ludlow Department of Public Works (DPW) Commission Chairman Thomas Haluch was fined \$3,500 for using his position to settle a private dispute with the Massachusetts Municipal Wholesale Electric Company (MMWEC). According to a Disposition Agreement, in June 2002 MMWEC began construction of a \$10 million 5.6-mile long gas pipeline in Ludlow that ran through approximately 45 public and private properties including Haluch's. MMWEC paid Haluch for the use of his property to lay the pipe, with the understanding that MMWEC would restore Haluch's property to its original condition. Haluch was dissatisfied with the restoration work performed by MMWEC and offered to do the restoration work himself in exchange for a certain payment from MMWEC. Haluch's offer was several thousand dollars more than MMWEC's, which was based on a preliminary field evaluation. During several discussions about the restoration with MMWEC, Haluch referred to his DPW position

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Litigation Update

The Executive Director, and by delegation, the Commission's Legal Division attorneys, have special assistant attorney general status. This status permits Legal Division attorneys to represent the Commission in court proceedings, under the oversight of the Office of the Attorney General. The Commission has recently been involved in two litigation matters.

Vineyard Conservation Society, Inc. et. al. v. State Ethics Commission

Richard Toole, a member of the Martha's Vineyard Commission who wants to become a board member of the Vineyard Conservation Society, a private non-profit organization, and the

Society challenged a Commission advisory opinion in Suffolk Superior Court.

After a hearing, the court issued a memorandum denying Toole and the Society's motion for judgment and allowing the Commission's motion for judgment in its favor. On February 10, 2004, the court entered a judgment in favor of the Commission declaring that the Commission's decision "was not arbitrary, capricious, unsupported by substantial evidence, an abuse of discretion, a violation of the governing statute or a violation of plaintiffs' state

and federal constitution rights." Toole and the Society have sixty days from the entry of judgment to file an appeal. If no appeal is filed, the litigation will be concluded.

John Doe v. State Ethics Commission

In this matter, a superior court judge has decided that the Commission has the authority to issue summonses to compel testimony during a preliminary inquiry. Materials in this matter are impounded.

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and stated that he wielded power and influence in the town, that he would make sure the pipeline's bonds were not released, and that he could shut down the pipeline. MMWEC officials decided to give Haluch the payment he requested to resolve the matter. By invoking his official position as DPW Commissioner and threatening to use that position to take various actions including shutting down the pipeline, Haluch violated §23(b)(2).

In the Matter of John Sanna, Jr.

The Commission fined Buzzards Bay Water District Commissioner John Sanna, Jr. \$2,000 for violating the state's conflict of interest law by borrowing equipment from the Water District. According to a Disposition Agreement, the Ethics Commission notified Sanna in March 2002 that he appeared to have violated the conflict of interest law by borrowing equipment from the Water District in Fall 2001. Sanna was warned that future violations would be resolved publicly. Despite the Commission's warning, Sanna borrowed a paint spray gun in late summer 2002 and a metal detector in December 2002. A paint spray gun costs approximately \$30 per day to rent; a metal detector costs approximately \$20 per day. Sanna failed to return the items he borrowed until the Ethics Commission contacted him in August 2003. By borrowing the paint spray gun and metal detector, Sanna violated §23(b)(2).

In the Matter of Stephen V. Shiraka

Old Rochester Regional School District Manager of Facilities and Grounds Stephen V. Shiraka was fined \$1,000 for advising the Mattapoisett School Building Committee on its supervision of Turner Construction Company (Turner) while he was being paid privately by Turner. According to a Disposition Agreement, Shiraka was responsible for supervising all new construction projects in the school district, which

consists of Marion, Mattapoisett and Rochester. In December 2000, Mattapoisett retained Turner to serve as project manager on the modernization and expansion of its two elementary schools. Shiraka attended weekly progress meetings, performed site visits and advised School District and Mattapoisett officials on Turner's management of the project. Between October 2001 and January 2002, Shiraka was paid more than \$1,100 by Turner for reviewing documents in connection with Turner projects in other school districts. In summer 2002, Turner hired Shiraka to serve as a paid consultant on the renovation of the Dennis-Yarmouth Regional High School construction project. Shiraka was paid a retainer of \$3,000 per month. In spring 2003, when the Commission began to review this matter, Shiraka and Turner suspended the consulting arrangement. By advising Mattapoisett on its supervision of Turner while being paid privately by Turner, Shiraka violated §23(b)(3). Shiraka could have avoided violating §23(b)(3) of the conflict law by making an advance written disclosure to his appointing authority of the facts that would otherwise lead to such a conclusion. While Shiraka orally apprised his supervisors and other public officials of his work for Turner, Shiraka did not file a written disclosure. According to the Disposition Agreement, "The law's provision of advance written disclosure is not a technical requirement. Such a written disclosure is a public record

. [that] subjects the arrangement to public review."

In the Matter of Suzanne Traini

The Commission fined Southborough Board of Health (BOH) member Suzanne Traini \$1,500 for violating G.L. c. 268A, the state's conflict of interest law, by participating in discussions of septic permits for property she was in the process of purchasing. According to the Disposition Agreement, Traini signed offers to purchase property at 26 Lynbrook Road and surrounding land for a total of \$575,000 in September 2000. In October, the BOH approved septic permits for two lots on the property. Traini abstained from the approvals. After the Massachusetts Water Resources Authority and the Massachusetts District Commission expressed concern that the septic permits should not have been granted because the setback from a nearby waterway was insufficient, the Public Health Director recommended at a January 2001 meeting that the permits be rescinded and a public hearing be held. Traini objected to the proposed rescission, stating that, by law, the BOH could not rescind a permit once a construction permit had been issued. Another BOH member suggested that Traini abstain from the discussion; she declined to do so. The BOH took no action on the permits. By discussing the propriety of the board changing its policy and considering rescinding the property's permits, Traini violated §19.

SECTION BY SECTION THE CONFLICT OF INTEREST LAW, G. L. c. 268A

- Section 19 generally prohibits a municipal employee from officially participating in matters in which she or a business partner has a financial interest.
- Section 23(b)(2) prohibits a public employee from using his or her position to obtain for the employee or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties.